**Pocono Artesian Waters Company and Pocono Springs Demi Sales Co. *and* United Food and Commercial Workers, Local 72, United Food and Commercial Workers International Union, AFL–CIO.** Cases 4–CA–20122–1, 4–CA–20122–2, 4–CA–20122–3, 4–CA–20122–4, 4–CA–20122–5, 4–CA–20122–6, and 4–CA–20265–2

September 15, 1993

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On March 11, 1993, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Pocono Artesian Waters Company and Pocono Springs Demi Sales Co., Mount Pocono, Pennsylvania, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] We affirm the judge's denial of the Respondents' motion to reopen the record. See fn. 15 of the judge's decision. We also grant the General Counsel's request to strike from the Respondents' brief their April 7, 1993 letter attachment. The evidence the Respondents seek to adduce is neither newly discovered nor previously unavailable. See Sec. 102.48(d)(1) of the Board's Rules and Regulations.

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Richard Wainstein, Esq.*, for the General Counsel.
*James R. Nanovic, Esq.*, of Jim Thorpe, Pennsylvania, for the Respondent.
*Carol L. Backes*, Organizer and Business Agent, of Oakmont, Pennsylvania, for the Charging Party.

## DECISION

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

BENJAMIN SCHLESINGER, Administrative Law Judge. The consolidated complaint alleges that, once Respondents Pocono Artesian Waters Company and Pocono Springs Demi Sales Co.[1] learned that their employees had decided to organize and after United Food and Commercial Workers, Local 72, United Food and Commercial Workers International Union, AFL–CIO–CLC (the Union) filed a petition with the Board for a representation election, Respondents threatened to contract out certain of their work and did so and also laid off employees, all in violation of the National Labor Relations Act, 29 U.S.C. § 151 et seq. Respondents denied that they violated the Act in any manner.[2]

Jurisdiction is conceded. Respondents are both corporations with a production facility in Mount Pocono, Pennsylvania, where they process, bottle, and distribute beverages. During the 12 months ending March 31, 1992, they sold and shipped goods valued in excess of $50,000 directly to customers outside Pennsylvania. I conclude, as Respondents admit, that they are employers within the meaning of Section 2(2), (6), and (7) of the Act. For the purposes of this proceeding only, Respondents also conceded that they constitute a single employer within the meaning of the Act, and I so conclude. I also conclude, as Respondents admit, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

Truckdriver Zane Burke was the employee who initially contacted the Union, and he and four other employees met with union representatives on Wednesday, July 17, 1991.[3] Three of them signed union authorization cards then. By Friday, Burke and the others had obtained cards from about 90 percent of Respondents' 41 employees. He gave them to the Union on Monday, and on Tuesday, July 23, at the break between the first and second shifts, about 3 p.m., Burke and five other employees and two union representatives went to Respondents' office to personally deliver the Union's demand for recognition to Michael Melnic, Respondents' president and chief executive officer. Melnic would not see them, and they left the demand with his receptionist. (On the same day, the Union also filed its petition for a representation election with the Board's Regional Office.)

Immediately after, the employees who were then working, those on the second shift, put on ''Union yes'' buttons. By the next day, all the employees wore some kind of prounion button or tag.[4] Early that next day, Melnic scheduled and presided over what would be almost daily (sometimes twice a day) meetings with his managers and supervisors. Present at the first was Edward Schultz, the first-shift supervisor; Ed Jennings, senior vice president of sales and marketing; Carl Petro, executive vice president and chief administrative officer; Tim Fitzgerald, operations manager; and Ken Teats, corporate controller. Melnic asked who had organized the Union. Fitzgerald thought that the second shift had, because

[1] 1The names of the Respondents appear as amended at the hearing.

[2] The relevant docket entries are as follows: The unfair labor practices were filed by the Union in Cases 4–CA–20122–1, –2, –3, –4, –5, and –6 on October 4, 1991, and in Case 4–CA–20265–2 on November 20, 1991, which it amended on February 21, 1992. The complaint issued on March 31, 1992, and the hearing was held in Stroudsburg, Pennsylvania, on October 26 and 27, 1992.

[3] All dates refer to 1991, unless otherwise stated.

[4] Contrary to Respondents' brief, the record does not support their contention that all employees wore their prounion insignia at all times, even until they were laid off.

they were new hires.[5] Melnic replied that it was probably Burke. He ordered Fitzgerald to get outside trucking contractors so he could rid himself of Burke, no matter what it might cost. He also ordered that the second shift be disbanded. When Fitzgerald asked how to accomplish that, Melnic stated that the supervisors and managers ought to start evaluating employees, give them bad evaluations, and fire them.

Later that day, Fitzgerald told Burke that he had previously been employed at Coca-Cola, where there was a union, and that, unfortunately, working with a union, the good people get held back. Fitzgerald then told him what Melnic had said earlier that day: ''[T]hey're going to get rid of the trucks for this. They'll contract you out.'' or ''[T]hey're going to contract out the trucks because of this Union thing.'' Employee Ron McLaughlin overheard this threat, that Respondents would ''get other drivers'' as a result of the union organizing drive. McLaughlin was no longer an employee of Respondents when he testified, and he had nothing to gain by misstating that Fitzgerald had made the threat.[6] I found Burke candid and credible and credit his testimony, especially because he was the one who was being threatened and, as will be seen below, the threat as he related it was carried out. I thus find that Fitzgerald threatened Burke and conclude that Respondents violated Section 8(a)(1) of the Act.

In so doing, I do not credit Fitzgerald generally. He portrayed himself as one who favored labor organizations,[7] but this threat, not denied by him, and yet other statements he made at meetings of Respondents' management, also not denied, did not support his alleged prounion stance. Furthermore, as will be seen, he and Melnic were guilty of the most flagrant retaliations against the employees' attempt at self-organization. Evidence of union animus is rife. Schultz' testimony makes evident that Respondents were motivated by hatred of the Union and desired to rid themselves of all union supporters. Respondents contend that Schultz should not be believed because he held grudges against them for, among other things, their reduction of his pay. That reduction was temporary and applied to all management salaries. Furthermore, shortly before he resigned, Melnic gave him a bonus. Accordingly, there was no evidence that Schultz was at all biased. At best, I felt that he was upset with Respondents' bias against and mistreatment of its employees because of their union activities.[8] Otherwise, I was impressed that he remembered so many events with clarity and detail, both of which were generally lacking from the witnesses who testified on Respondents' behalf.

The next day, the managers met again. This time Melnic distributed a list of the employees and asked them to note whether the employees were in favor of the Union or opposed to it. Schultz termed the document a ''hit list'' that would determine whether the employee would continue to be employed or would meet an untimely end. Each manager was designated to sway an employee whose vote was ''yes,'' report back at the next meeting whether the employee could be swayed and the vote could be changed into a ''no,'' or whether the employee was a definite ''yes.'' Over time, as employees' sentiment changed, new lists would be distributed, and different employees would be the subjects of discussion and of Respondents' effort to change their minds.

Specific names were raised at the meetings. From an early date, Melnic believed that Jeff Bensley and Patricia Rasmussen were union supporters who could not be persuaded not to support the Union. His opinion grew stronger after they testified at the representation hearing, which was held on August 2 and 9.[9] As a result of their testimony, Melnic wanted to discharge them and directed their discharge. Another problem employee continued to be Burke. Burke's principal function was to drive a 6700-gallon tanker truck from the plant to the spring, where he would load the spring water into the tanker, take readings on the pumphouse equipment, and collect samples. He would then return to the plant and pump the water into a silo, where it would be processed. He would run up to three runs a day, each one taking about 3 hours. In addition, he would jockey or switch trailers from one location of the facility to another. He worked on the first shift, and Dave Adams, the other full-time driver, worked on the second. Melnic was convinced that Burke had started the organizing drive. He wanted to get rid of Burke, too, but there was a problem with getting rid of Burke without terminating Adams, because, argued Fitzgerald, the discharge of Burke would have been interpreted as being caused by his union activities. On Monday, August 26, Burke finished his third run, working overtime. Fitzgerald told him that he was then terminated and that he had to punch out and empty the truck of his personal belongings. He said that Respondents were ''getting rid of the trucks.'' Adams, too, was discharged.

The above-credited evidence demonstrates that Burke's union activities motivated Respondents to act as they did. Melnic selected Burke solely because of his belief that Burke was a union supporter and instigated the organizing campaign. There is yet other support. Schultz met with Fitzgerald, who commented that it was too bad that Respondents had to terminate Adams, but it could not let go of Burke without treating Adams the same. Otherwise, that would be too suspicious. Schultz also remarked that it was costing

[5] Fitzgerald testified, but not about anything that transpired at the management meetings.

[6] McLaughlin was accused by Respondents of stealing money, but that charge did not come to his attention until about 4 months before the hearing. He had, however, earlier signed an affidavit during the Region's investigation relating to this incident. I am persuaded that he did not fabricate his testimony to get revenge on Respondents for filing a criminal complaint.

[7] Fitzgerald testified that he had never been greatly opposed to unions and that it was much easier to manage a company that was unionized. Because of the statements attributed to him, I find that his attempt to cast himself as a union sympathizer is patently untrue. Rather, he tried to please his boss, Melnic, and his testimony was wholly geared for his approval.

[8] Schultz was aware of the organizing effort. He saw the employees gathering during working hours and kidded them that they were attending union meetings during working hours. He did not discipline them, nor did he report what he had seen to management. When Melnic asked his supervisors and managers, after the Union had made its demand for recognition on July 23, whether they had any advance notice of what the employees were doing or thinking, Schultz said nothing.

[9] The Union called as witnesses Burke, Bensley, Rasmussen, McLaughlin, Nicholas Merigris, Harry Neuman, Eric Finkbeiner, and Troy Shotwell. The election was held on October 7, pursuant to the Acting Regional Director's Direction of Election, dated September 10.

much more for Respondents to be contracting out the work of the truckdrivers rather then employing them to do the work. Fitzgerald replied that it did not make any difference what it cost, that he did not want Burke in the plant. These findings establish the prima facie case that the General Counsel must prove under *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). *Wright Line* then requires that Respondents, in order to avoid liability, must prove that they would have taken the same action that they did, even in the absence of the union activities. Respondents did not do so.

Respondents' defense was premised on the fact that they had decided that it was cheaper to contract out their trucking work than to employ the two truckdrivers and rent trucks for them. But there were two basic problems with Respondents' proof. First, both Melnic and Fitzgerald wanted to get rid of Burke and specifically stated that cost was no factor—even if it cost Respondents more, Burke had to be discharged. More important, Schultz testified that the document on which they principally relied to prove their cost savings, a cost comparison (G.C. Exh. 16), was prepared the day before the Region's investigator had an appointment to talk with Respondents' representatives about the unfair labor practice charges on which this proceeding is based. (Melnic asked Fitzgerald where the price and cost comparison was, and Fitzgerald answered that he did not have it yet. According to Schultz, ''Melnic, in an outrage, hit the table and told him to go do it right now before (the Region's investigator) gets here.'') Because the first unfair labor practice charge was filed on October, that interview had to take place long after the driving jobs were contracted out. Accordingly, the exhibit was fraudulent, and I do not rely on it. In addition, I refuse to rely on any of the testimony of both conspirators, Melnic, who ordered the preparation of the document, and Fitzgerald, who carried out Melnic's order. Witnesses who create documents to defraud this Agency are unworthy of any belief.

Thus, I do not believe Respondents' contentions that they had always planned to contract out this work. There is evidence that some thought was given to the contracting out of this work, and every time that Respondents had some trouble with Burke's actions, it threatened him with ending his job. For example, Fitzgerald had once before threatened Burke that the trucking work would be contracted out if he did not withdraw his complaint to the Wage and Hour Division about not being paid overtime. Schultz also recalled two other occasions, when Burke refused to drive his truck when the brake lights were not working and when he thought that there was too much snow and ice to drive safely. Fitzgerald threatened that he ought to get outside contractors so that he would not have to put up with Burke. But nothing came of these threats, and nothing came of some other considerations that had been given to contracting out the work on other occasions, as long before as July 1990, when Melnic was first hired and, he testified, was opposed to employing truckdrivers. One incident made it apparent that Respondents did not intend to contract out their work. In March, Burke was considering applying for a mortgage. To ensure that he would be able to keep up his payments, he asked Petro if his job was in jeopardy. Petro assured him that it was not: as long as Respondents existed, ''[W]e will need you.'' It was only when the union organizing drive began that serious consideration was given to this issue, and the persuasive evidence demonstrates that consideration was given to it only because Melnic believed (correctly) that Burke instigated the union movement. As a result, Respondents have not sustained their burden of showing that they would have contracted out the work even in the absence of the union campaign.[10] Rather, their decision was made solely because Burke was a union instigator and adherent. Adams was the innocent victim of Respondents' retaliation against Burke. I conclude that Respondents violated Section 8(a)(3) and (1) of the Act.[11]

Three days before Respondents contracted out the trucking work, they terminated the second shift. That decision is not questioned in this proceeding, but the selection of the 11 employees they laid off is. Again, the General Counsel has proved a prima facie case. As the days of the union campaign proceeded, Respondents' supervisors were designated to attempt to persuade individual employees to turn against their support of the Union. Much of that attempt was successful, and many of the ''yes'' votes were turned to ''no's.'' When the time came for the layoff of the second shift, Respondents did not lay off everyone on that shift. Rather, they selected certain of those people and employees from the other shifts in a random fashion. Schultz testified that one of the objects of Respondents' initial disaffection was the second shift, all new employees, as the ones likely to have instigated the Union's organizing campaign. Melnic wanted that shift disbanded, not because business was bad in July, but because Fitzgerald thought that the second shift started the union campaign. By the time that the shift was terminated, Respondents determined that many of the employees on that shift had changed their positions. But Jeff Bensley, David Geiger, and Pat Rasmussen had not, and they were discharged. Thus, as to them, a prima facie case has been made. There was no evidence about whether George Hackett and Kevin Kojeszewski favored the Union,[12] but they were on the second shift and were thus fingered as union supporters, so the General Counsel has also proved his prima facie case as to them.

The General Counsel also proved a prima facie case regarding three employees on the first shift who were laid off: Two were known to favor the Union, Linda Gates and Patricia Kosmider. (Melnic directed the managers not to waste their time with such employees as Kosmider, who was wearing a union pin. ''Get rid of her,'' said Melnic.) The other was Ronald Hamm. Although Schultz could not recall any conversation about him, Hamm was one of the employees

[10] Much of Respondents' other proof was shallow. The impetus for the contracting out came from an unnamed driver who relayed an offer to Fitzgerald at just the time that the employees were demanding recognition of the Union. The negotiations were held between this unnamed individual and Petro, neither of whom testified. Finally, the rate agreed on appears to be greater than that offered to and rejected by Respondents 6 months before and was still being negotiated even after Respondents had terminated Burke and Adams.

[11] There is no evidence that Respondents terminated Burke for his testimony at the representation hearing, and I dismiss the allegation that the discharge violated Sec. 8(a)(4) of the Act.

[12] Schultz narrated his recollections of the discussions that the managers and supervisors engaged in at their daily meetings. He could not recall the discussions about every one of the employees.

who presented the Union's demand for recognition. That constitutes sufficient evidence to prove a prima facie case that Respondents were motivated by his union activities. There was no testimony that the other three employees, Kim Mosteller, Jennifer Paradiso, and Michael McKee, favored the Union at the time of their layoffs, except that all the employees favored the Union at the beginning of the campaign and there is no evidence that Respondents persuaded them to oppose the Union. Furthermore, the fact that Respondents did not lay off one of their employees tends to prove that they were well aware of these employees' feelings about the Union. Kristine Pappas was a bottle filler operator, and apparently a very good one, who would have been hard to replace. Even though she was an ardent union supporter, Respondents decided to keep her. Petro said, ''[O]ne yes vote wouldn't hurt us.'' Pappas being the one ''yes'' vote whom Respondents decided to keep, these other employees must have also been ''yes'' votes whom they decided to lay off. That being so, there is a prima facie case that Respondents selected these employees because of their union activities.

Respondents contend that they did so only after evaluating the employees, but, having found that none of their witnesses are reliable, I do not believe them. Furthermore, there is no documentary evidence that they evaluated anyone. Schultz testified that evaluations were not the test—he was not asked to evaluate employees, but only to persuade them to vote against the Union. I once again credit him, not only because I found him believable but also because Respondents made a clear effort to discharge those who favored the Union (or testified in favor of the Union) and to retain those employees they felt certain would vote against the Union or those, even if they were ''yes'' votes, who would not harm Respondents' election prospects. For example, Respondents could not have been truly interested in the fact that employees were good workers. John Gallo was viewed as a poor worker, but Melnic said: ''It doesn't matter. We're going to keep him. He's a no vote.'' Apparently, Melnic could not discharge enough employees to ensure that the vote would be against the Union. Thus, he decided to neutralize other ''yes'' votes in imaginative ways. For example, the route drivers favored the Union, so Melnic determined to change their job classification to route salesmen, so that they could not vote. Fitzgerald suggested that Stephen Filardi, a sure ''yes'' vote, be elevated to a supervisor, so that he could not vote for the Union. Melnic and Fitzgerald were concerned about Harry Neuman, who was a strong union supporter. However, he was a former officer of a union for many years, and they felt that he was very familiar with labor laws. Accordingly, they made him a supervisor.[13]

All these findings demonstrate that Respondents made a calculated attempt to retain those employees who, they thought, would vote against the Union, to retain those who were decent workers but who would have voted for the Union had Respondents not changed their job classification so that they would not be eligible to vote in an election, and to terminate the rest. I find that all the discharges were motivated by Respondents' distaste for the employees' union activities and fear of their vote and conclude that all the discharges violated Section 8(a)(3) and (1) of the Act. In addition, because Melnic specifically wanted to rid himself of Rasmussen[14] and Bensley because they testified at the representation hearing, I conclude that Respondents' discharge of them violated Section 8(a)(4) of the Act.

The unfair labor practices found here, occurring in connection with Respondents' business, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondents have engaged in numerous unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall order Respondents to reestablish the trucking operations that they contracted out in order to discriminate against Burke, as they existed on August 26, 1991, when Respondents discharged him and Adams. *Service Merchandise Co.*, 278 NLRB 185, 188 (1986). I shall also order Respondents, if they have not already done so, to offer immediate and full reinstatement to Zane Burke, Kevin Kojeszewski, Dave Adams, Patricia Kosmider, Linda Gates, Mike McKee, Dave Geiger, Kim Mosteller, George Hackett, Jennifer Paradiso, Ronald Hamm, Jeff Bensley, and Patricia Rasmussen to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of wages and other benefits they may have suffered by reason of Respondents' discrimination against them, in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In making this recommendation, I note that Respondents began to litigate the issue of whether they made offers of reinstatement to various of the discriminatees. By agreement of the parties, that issue was left to the compliance stage of this proceeding, and I make no specific finding about whether legitimate offers were made.

On the foregoing findings of fact and conclusions of law and the entire record in this proceeding,[15] including my ob-

[13] Respondents were unsuccessful. The Acting Regional Director found him to be an employee, and he was included in the unit.

[14] Respondents contended that Rasmussen was laid off because she was the quality control manager on the second shift and that she could not be moved to the first shift because Schultz was assigned to do that work. However, Respondents had no problem with retaining three filler operators, although only one could be used in that position and the other two had to be assigned elsewhere. Respondents did not provide any evidence that they could not have similarly assigned Rasmussen to perform a different function.

[15] The General Counsel's unopposed motion to amend the official transcript in certain respects is granted. Respondents' motion, dated February 9, 1993, to reopen the hearing for the introduction of additional evidence is denied. Respondents gave insufficient reasons that the new evidence was not found previously, particularly in light of the fact that two of the documents should have been produced at the hearing because the General Counsel subpoenaed them. To permit Respondents now to introduce these documents, after it has failed to comply with a subpoena duces tecum and after it has become aware of the positions of the General Counsel to support his case would severely prejudice him and the Union. Furthermore, even if I were to consider the documents, in light of my credibility determinations,

*Continued*

servation of the demeanor of the witnesses as they testified, and my consideration of the briefs filed by the General Counsel and Respondents, and pursuant to the provisions of Section 10(c) of the Act, I issue the following recommended[16]

## ORDER

The Respondents, Pocono Artesian Waters Company and Pocono Springs Demi Sales Co., Mount Pocono, Pennsylvania, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening their employees that Respondents will contract out their work because of their employees' union activity.

(b) Laying off, terminating, or otherwise discriminating against any of their employees because of their union activities or sympathies, or suspected union activities or sympathies, or because their employees testified at or participated in National Labor Relations Board proceedings.

(c) Contracting out their operations involving hauling tankers of water from their water source to their Mount Pocono, Pennsylvania facility and jockeying trailers at that facility, because of the union activities or sympathies, or suspected union activities or sympathies, of their employees.

(d) In any like or related manner interfering with, restraining, or coercing their employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reestablish their operations involving hauling tankers of water from their water source to their Mount Pocono facility, and jockeying trailers at that facility, as they existed on August 26, 1991.

(b) Offer Zane Burke, Kevin Kojeszewski, Dave Adams, Patricia Kosmider, Linda Gates, Mike McKee, Dave Geiger, Kim Mosteller, George Hackett, Jennifer Paradiso, Ronald Hamm, Jeff Bensley, and Patricia Rasmussen immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Remove from their files any reference to the unlawful discharges of the above-named employees and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at their facility in Mount Pocono, Pennsylvania, copies of the attached notice marked ''Appendix.''[17] Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Respondents' authorized representative, shall be posted by Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondents have taken to comply.

IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

my findings of fact and conclusions of law would be no different. Petro never testified, and I reject his self-serving memorandum as hearsay. The document dated in February 1991 relating to the possibility of contracting work was not then acted on by Melnic, but the decision made 6 months later resulted solely from the employees' union activities. The third document does nothing to establish that Schultz was biased against Respondents.

[16] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[17] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

WE WILL NOT threaten our employees that we will contract out their work because of our employees' union activity.

WE WILL NOT lay off, terminate, or otherwise discriminate against any of our employees because of their union activities or sympathies, or suspected union activities or sympathies, or because our employees testified at or participated in National Labor Relations Board proceedings.

WE WILL NOT contract out our operations involving hauling tankers of water from our water source to our Mount Pocono, Pennsylvania facility and jockeying trailers at that facility, because of the union activities or sympathies, or suspected union activities or sympathies, of our employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL reestablish our operations involving hauling tankers of water from our water source to our Mount Pocono facility, and jockeying trailers at that facility, as they existed on August 26, 1991.

WE WILL offer Zane Burke, Kevin Kojeszewski, Dave Adams, Patricia Kosmider, Linda Gates, Mike McKee, Dave Geiger, Kim Mosteller, George Hackett, Jennifer Paradiso, Ronald Hamm, Jeff Bensley, and Patricia Rasmussen immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other

rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, with interest.

WE WILL remove from their files any reference to the unlawful discharges of the above-named employees and notify them in writing that this has been done and that the discharges will not be used against them in any way.

POCONO ARTESIAN WATERS COMPANY AND POCONO SPRINGS DEMI SALES